



SUPPLEMENTAL APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1659

ALLEN W. HAYES,

Petitioner,

v.

NATIONAL TRANSPORTATION SAFETY BOARD

and

LANGHORNE M. BOND - ADMINISTRATOR, FEDERAL
AVIATION ADMINISTRATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals for
the District of Columbia Circuit

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This Supplemental Appendix is a clarifying appendix providing more legible copies of the documents that were included in the original appendix to the Petition for Certiorari. No additional materials except this table of contents are included. The previously submitted materials have been re-typed so the pagination is now different from the pagination of the original documents. The documents included in this Supplemental Appendix are as follows:

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UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

-----X
JOHN L. McLUCAS, ADMINISTRATOR, FEDERAL
AVIATION ADMINISTRATION,

	Complainant	Docket No.
against		
ALLEN W. HAYES,		SE3284

Respondent.

For Complainant: Lawrence Sullivan, Esq.
For Respondent: John C. Barney, Esq.

Part 1 Court of Claims
State Office Building
3338 Wash Street
Syracuse, New York

October 19, 1976

INITIAL DECISION AND ORDER

JUDGE GERAGHTY: This proceeding comes before the National Transportation Safety Board pursuant to the provisions of the Federal Aviation Act of 1958 as amended, 49 USC 1429 and the Board's Rules of Fact that is in their Safety Proceedings, 49 CFT 821.1 et sequentes; on the appeal of Allen W. Hayes, hereinafter referred to as Respondent, from an Order of Revocation which seeks to revoke Respondent's Commercial Pilot Certificate

No. 53040-1, with attached ratings and limitations.

The Order of Revocation serves herein as the complaint; was filed on behalf of the Administrator of the Federal Aviation Administration through his Regional Counsel, Mr. Lawrence C. Sullivan, Esquire.

After due notice to the parties, this matter came on for hearing in two separate occasions, both in Bridgeport, Connecticut and in Syracuse, New York.

The Respondent on both occasions was present and was represented by his attorney, Mr. John Barney, Esquire. The Administrator, herein the Complainant, was represented throughout by his attorney, Mr. Lawrence C. Sullivan, Esquire.

The parties and counsel were afforded full opportunity to offer evidence, to call, examine and cross examine witnesses; and in addition were afforded the opportunity to argue in support of their respective

positions and to propose findings of fact and conclusions of law.

The case is before this Administrative Law Judge both for hearing and decision, and as is provided by the Rules of Practice, I have elected to issue an oral decision in the matter.

Discussion: The Complainant herein seeks as indicated, revocation of the Respondent's airman's certificate. The Administrator bases his complaint essentially upon allegations arising out of an incident which occurred on September 22, 1975 in New Haven, Connecticut.

The Respondent, without detailing his contentions, and they will become apparent as I discuss the evidence, contends essentially that he was not the pilot of the aircraft involved in the incident, that even if he were that the violations alleged were in part caused by errors committed by air traffic controllers, and therefore

excusable; and ultimately, that even if violations are found against him, that in light of his piloting background and history that the sanction of revocation is inappropriate.

In discussing the evidence I first will discuss the evidence as it pertains to the identity of the pilot since that is one of the crucial issues. I then will discuss the regulatory violations in the context of the facts of the incident itself, and lastly, sanction.

In discussing the evidence I will only discuss the evidence briefly. I don't intend to discuss it in excruciating detail. The parties should be aware however, that I have considered all of the testimonial and documentary evidence of record in arriving at my decision.

The Administrator relies upon the evidence and testimony given by Mr. Sheehan. Mr. Sheehan is in no way connected with the Federal Aviation Administration, nor is he

connected with the Respondent. Rather, Mr. Sheehan is employed by New Haven Airway and was on September 22, 1975, in the performance of his duties for New Haven Airways at New Haven Airport between approximately 5:45 and 6:00 p.m. local time.

At that time he testified he became aware of some difficulty being encountered by an aircraft identified as 71 Juliette, as he was listening to the radio which was located in the office of buildings occupied by New Haven Airways.

After hearing these communications between the tower, in which tower was apparently issuing a go around to 71 Juliette, Mr. Sheehan by looking out the window saw this aircraft land and a couple of minutes later saw the aircraft pull up in front of the New Haven Airways Hangar.

At this point Mr. Sheehan indicated that because of the location and other occurrences where a prop blast caused some

difficulty with the property there, he went out to the aircraft to talk to the pilot to apparently ask him to move the aircraft in some way so as to not cause blast damage to the hangar.

He stated that he went up to the aircraft, looked in the aircraft, talked to the pilot, that he was able to see the pilot, that the pilot therein was the sole occupant and that during this period of time Mr. Sheehan had a clear view of the pilot and the cockpit.

He was at the time of this discussion no more than 10 feet from the pilot. At that point he did not know who the pilot was. He really had gone out there to discuss the positioning of the aircraft, apparently.

Subsequently, he was contacted by personnel from FAA and was requested by them to go to Ithaca to see if he could possibly affirmatively identify the

particular individual that he saw in 71 Juliette on 9/22/75 in New Haven.

On September 30th he went to Ithaca in conjunction with a Mr. Graham and a Mr. Kendall. Mr. Sheehan testified that when they arrived at Ithaca after some confusion as to where Mr. Hayes particularly was that while they were standing by a fence, having been told by Mr. Graham that an aircraft was coming out in which Mr. Hayes was occupying at that time, he looked from the fence area out into an aircraft which he identified as an Aerostar and that the person who was in the Aerostar in Ithaca on September 30, 1975, was in fact the same individual that he had seen in New Haven, Connecticut operating or sitting in 71 Juliette in front of the New Haven Airways buildings.

Significantly he testified that a conversation of about 20 seconds with the pilot on 9/22/75, but during the observa-

tion of the Aerostar at Ithaca, that he observed the aircraft for a good minute or two and was able to identify through the windshield the individual as being the same individual he had seen on both occasions.

As to identifying the particular individual, that is who the individual was that he saw on September 22 and September 30, Mr. Sheehan indicated by looking at various photographs, that in his opinion at the present time, the photograph identified herein as Exhibit 7A and B were the ones most close or most probable as being the same individual depicted in the photograph that he saw on September 30 and saw on September 22nd.

It is true that in subsequent testimony Mr. Sheehan was not able to pick the individual out of a group of individuals and apparently was not able to conform his recollection as to the photographs

with the individual at this time.

Mr. Sheehan was quite candid in indicating that during the period of time, his recollection has become hazy, and that he did not want to commit himself at this point because he was not absolutely positive as to his identification at this point in time.

However, he was positive in his testimony that the person that he saw on September 30 was the same individual that he saw on September 22nd, 1975.

Mr. Graham is employed by Federal Aviation Administration. Apparently he became involved in this incident, coincidentally when he was in an office, FAA office and heard a Mr. Kendall talking about the incident with other persons of the General Aviation District Office.

Mr. Graham apparently is familiar with the Respondent Mr. Hayes and was able, he felt, to make a positive identification

of Mr. Hayes.

He therefore went with Mr. Sheehan and Mr. Kendall to Ithaca for the purpose of identifying Mr. Hayes.

On the way up there there was no conversation, according to Mr. Graham, concerning Mr. Hayes. When they arrived at Ithaca apparently Mr. Hayes was not immediately available, however, subsequently, it was determined that Mr. Hayes was going to be coming out of what has been identified as the South Hangar at Ithaca, Chart Air, and that Mr. Hayes was going to be piloting or occupying one of the pilot seats in an Aerostar.

Mr. Graham came back and informed the parties, that is, Mr. Kendall and Mr. Sheehan, that this aircraft was coming out of the hangar.

At this point Mr. Graham testified that when the Aerostar did come out he was standing alongside Mr. Sheehan and Mr. Kendall and that when Mr. Sheehan saw

the aircraft, Mr. Sheehan did testify and state to him at that point that the person that he saw coming out of the hangar in the Aerostar was the same person; and that the person Mr. Sheehan identified at that time was known in fact to Mr. Graham as Mr. Hayes.

Mr. Askew testified essentially as to the identification of various positions and tapes. However, he also testified as to a conversation that he had with Mr. Hayes in which, according to Mr. Askew, the conversation began in the third person but then went around to the first person, as the conversation progressed, indicating that to him, that is Mr. Askew, that the Respondent in discussing the incident of 9/22/75, came to the point in the conversation where he was discussing it as though he were the pilot.

It is true on cross examination he was not able to point out the specific phrase in the transcript as to where this occurred,

however Mr. Askew does remember that the conversation took place and in his statement, it appeared that the transcript was not complete as to this particular point.

With respect to the Respondent's case, the Respondent produced several witnesses this morning. All of these witnesses are employees of the Respondent.

The first witness was a Mr. Rogowicz. He is apparently the General Manager for Chart Air and has been that for some period of time, at least since about 1967.

Mr. Rogowicz testified as to the aircraft owned by Chart Air in September 1975, one of which was 4971 Juliette. The witness testified that the aircraft were operated by a number of persons, including the Respondent. That is, there were apparently at least six other pilots and also that the aircraft were rented out to student pilots or other pilots that were qualified to operate Chart Air aircraft.

There is testimony as to how various records were kept or not kept with respect to identifying who was in fact operating aircraft at that point. My observation of Mr. Rogowicz, in this Judge's opinion, Mr. Rogowicz' testimony with respect to the record keeping and particularly as it appeared on September of 1975 and this particular aircraft was less than convincing.

Mr. Thomas testified also for the Respondent. With respect to the forms, Mr. Thomas candidly admitted that he was not that clear as to who accounted for the forms, however, he did point out that in his opinion there would be no definitive way of telling on a particular charge form who the particular pilot was.

However, I thought it was significant that both Mr. Rogowicz and Mr. Thomas did indicate that if the aircraft were rented out to a customer, that the customer's name would most likely appear on the form.

Here the Respondent has put in no objective testimony of any form, of any type of record to show who was operating 71 Juliette on that particular date. If it was rented by someone else, or if it was signed by someone else; we just have no evidence at all offered by the Respondent on this particular point.

The last witness was a Mr. Lalley who testified essentially as to observations that he made at New Haven Tower on September 15th of this year.

In his testimony he was able to see aircraft at least three to four miles out on final and apparently not feel that the hill, which he admitted was to the northwest of the field, caused any sort of obstruction or impeded his observation of aircraft as they made their approach to runway 20.

The remainder of his testimony dealt with the probability of identifying someone from the fence which was approximately, in his testimony, 60 feet away; an individual standing there when an Aerostar would taxi out of the south hangar, and Mr. Lalley's testimony was that in his opinion, from his observation on numerous occasions, even where he knew who the pilot was, it was impossible for him to make identification by looking at the aircraft as it taxied out.

That essentially is the testimony with reference to the identification of the pilot on 9/22/1975. I also would mention here that when requested that the pilot give his name that the pilot did indicate that his name was Lawrence Sullivan. That appears in one of the exhibits.

I must take into account here the fact that the Respondent, on the evidence here, has had

some difficulty, shall we say, with the New England Region. This is something which cannot be totally disregarded.

In evaluating the testimony, I have taken into account the candidness, as I apprehended it, of Mr. Sheehan in giving his testimony; the difficulty as he admitted it in making a statement a year or more after the incident.

As balanced against his positive statements as to the identifications he did make at the particular point in time, and comparing them with the exhibits; the demeanor of the witnesses that did testify, Mr. Graham, Mr. Sheehan, Mr. Askew, Mr. Rogowicz, Mr. Lalley and Mr. Thomas, the various interests of those individuals and in balancing all of the testimony, I have on consideration of those factors and all of the evidence concluded that the elements as I have stated

them warrant resolution of the issue of credibility on this point in favor of the Complainant, and I formally make that finding for the record.

I would formally conclude and state therefore, for the record, that in this Judge's opinion the record by a preponderance of the substantial reliable and probative evidence establishes that on 9/22/1975 the Respondent did operate 4971 Juliette as shown by the transcripts on the face covers thereof, although abbreviations are used later. To have operated that aircraft in an operation into New Haven Airport.

Turning now to the operation itself, I reject the argument that air traffic control in any way contributed to the occurrence here. The evidence does not support that.

The record shows that the aircraft did report in six miles out and was re-

requested to report a down wind. Miss Fields was operating in the Tower. However her direct supervisor was Mr. Morris and as you will recall, many of the transmissions that were made herein, and we went through this in detail, were made not only by Miss Fields but also by Mr. Morris, her direct supervisor.

In any event, the aircraft was requested to report on a down wind. The evidence here does not establish that such a report was made. To the contrary, it clearly and unequivocally establishes that no such report was ever made.

The testimony of all the controllers, that is Miss Fields, Mr. Morris, and Mr. Robins is to the effect that no report was received from 71 Juliette until it was approximately one half mile out on final.

They testified that the aircraft appeared to pop out from behind a hill that was obscuring their vision. While

it may be true that Mr. Lalley did not have this hill obscure his vision, there has been no evidence here which shows a similarity of circumstances between these two occasions.

Absence of showing total similarity, Mr. Lalley's testimony carries, in this Judge's opinion, no weight. Here the controllers on the date in question were attempting to control several aircraft and were involved in controlling aircraft, not just observing operations. They had requested a report on down wind. They did not receive that and it is to my thinking completely within the realm of feasibility that when the aircraft suddenly reported a half mile out that by looking out there, it appeared to them, especially since the aircraft on their testimony appeared to be quite low, that it did come out from behind the hill, or at least appeared to suddenly be there when their attention was focused

upon this particular aircraft.

At the same time the evidence from the controllers and Mr. Gray was that another aircraft, 35 Tango had been cleared for takeoff, that is to taxi into position. There is some dispute as to exactly where this aircraft was with respect to the edge of the runway.

On the preponderance of the evidence here and from the testimony of the controllers it does appear that this aircraft was given a clearance to take off and that because of the clearance issued to 35 Tango that the go around clearance was given to 71 Juliette because, in the Traffic Controller's opinion, apparently a conflict was in the process of occurring between the two aircraft.

I might just digress here to indicate that in my opinion the Air Traffic Controllers' performance of their duties on this date in question, as it is when they

are controlling traffic at airports, is to assure, as best they can, safe clearance between the aircraft that are operating on or in proximity to that airport.

While it is true that the pilot has operational control of the aircraft, he must operate his aircraft in conformity with the instructions given by Air Traffic Control at the locations where Air Traffic Control jurisdiction is being utilized.

Absent an emergency, the Respondent or any pilot operating on an airport where Air Traffic Control is being exercised must operate in conformance with the instructions received from Air Traffic Control.

They are responsible for the traffic being controlled on that field or entrance to that field. That doesn't mean that you follow with blind obedience. One can question, but absent a declaration of emergency, which doesn't appear here, you are required

to operate in compliance with the instructions received.

Here I find nothing that would excuse the Respondent from operating in compliance with the instructions received. He was instructed to go around and he was instructed to do this twice. I don't think the instruction to report down wind, if it stood all by itself would be that significant. What is significant in my opinion is that after having been told to go around twice the pilot decided for himself that he could land the aircraft on that runway.

After landing he was also told to turn off the runway. Instead of doing this he executed a 180 in direct contravention of the instruction received and taxied back down the active runway.

I feel on all of the evidence here that by a clear preponderance of the substantial liable and probative evidence that regula-

tory violations of Sections 91.75 (b), 91.87 (h) have been clearly established.

With respect to Section 91.9, potential endangerment is sufficient. Whether or not the aircraft wing passed over 35 Tango or passed next to 35 Tango, it is sufficient that another aircraft was cleared by Air Traffic Control.

That Air Traffic Control in their judgment in trying to assure safety of operation and clearance between aircraft operating at the airport at that time issued a go around instruction which the Respondent ignored; and ignored deliberately.

I feel the operation by the Respondent at that time was sufficiently egregious and deliberate to warrant a potentially hazardous manner and in a reckless manner so as to potentially endanger the lives and property of others and in violation of Section 91.9 and I so hold.

With respect to the allegations of operation without possession of a certificate, the Administrator has made allegations with respect to suspension of Respondent's certificate by referring to two separate regulatory violations which bear docket numbers 1469 and 1618 respectively.

One Order was issued by the New England Region. The other Order was an Order apparently by the New York or Eastern Region.

There is nothing in the record here to contradict the position espoused by Mr. Sullivan in his argument, that is, that the Respondent did not surrender his certificate in compliance with the Order issued by the New England Region.

I therefore find that the evidence does establish that at the time the Respondent was operating the aircraft, he was operating the aircraft at a time he did

not hold a current and valid airman's certificate; because the certificate was at that point in time under an Order of suspension, which had been affirmed.

It also follows that he was operating therefore in violation of Section 61.3(a) and 61.19(f) in that he did not have a valid airman's certificate and that he had failed to surrender that certificate.

With respect to sanction: Taking into account the Respondent's prior history which here I note involves violations of the same sections; that is 91.75 (b), 91.87(h) on two occasions, that is 1969 and 1970; it does show a disregard or a tendency on the part of the Respondent not to comply at least in the area where ATC instructions are involved. I do take into account however, that these violations are somewhat removed in time; that is 1969 and 1970.

I have balanced that and the type of suspensions that were imposed in those

two cases, the nature of the violations here, Respondent's apparent long experience in aviation and his standing as testified to by his witnesses and apparently not seriously contradicted by the Complainant. I do not feel that on balance all of the evidence before me shows a sufficiently serious disregard of safety regulations so as to warrant the imposition of sanction of revocation, which is of course the ultimate sanction.

On the other hand, in light of the fact that this is a repetitive type violation, I feel that in light of the circumstances involved here in their entirety and the fact that the Respondent has apparently violated these same sections in the past that a sufficiently long period of suspension is necessary though for deterrent purposes and hopefully for educating the Respondent to the necessity of complying with Air Traffic Control instructions

absent an emergency type of situation.

Therefore, I will affirm the Administrator's complaint, however I do intend to modify the complaint to provide for a period of suspension rather than revocation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On consideration of the record in its entirety, the admissions of the parties and from my observation of the witnesses and their demeanor I make the following specific findings of fact and conclusions of law:

1. The Respondent has appeal from an Order of Revocation issued on behalf of the Complainant on May 7th, 1976 which seeks to revoke Respondent's Commercial Pilot's Certificate No. 53040-41 with attached ratings and limitations.

2. The Respondent is now and at all times pertinent herein was the holder of Commercial Pilot's Certificate No. 53040-41.

3. That Respondent on September 22, 1975, acted as pilot in command of Piper Aircraft Civil Registration No. N4971J, which landed at New Haven Airport, New Haven, Connecticut, at approximately 1751 local time.

4. That at said time the New Haven Airport on the evidence herein had in operation an operating control tower operated by the United States.

5. That as the Respondent approached the airport on this flight he contacted the control tower reporting his position as six miles east of the field.

6. Respondent as pilot in command was instructed by Air Traffic Control to report to the tower on a left down wind for runway 20. That contrary to said instruction, the Respondent did not report on a down wind leg but instead reported at a time when he was approximately one half mile out on final approach for runway 20.

7. That prior to the time that Respondent was advised or did advise Air Traffic Control that he was on a half mile final for runway 20, another aircraft, to wit, Cherokee N4435 Tango had been cleared for takeoff and was taxiing into position on said runway 20.

8. That on the facts and circumstances here that Air Traffic Control, upon ascertaining that the Respondent was one half mile out on final for runway 20 cancelled the takeoff clearance for November 4435 Tango and advised the Respondent in Aircraft 4971 Juliette to go around.

9. That despite the aforesaid instruction to operate 4971 Juliette in a go around, which instruction was issued more than once, the Respondent failed to comply with said Air Traffic Control Instruction.

10. That subsequent to receipt of

those instructions on his approach to runway 20 that the Respondent completed a landing on runway 20 without having received clearance from Air Traffic Control to land his aircraft on runway 20 at New Haven Airport.

11. That after landing upon runway 20 the Respondent was advised by the Air Traffic Control Tower to turn right off runway 20; however that contrary to said instruction the Respondent, instead of taxiing clear executed a 180 degree turn on the active runway and proceeded to taxi down said runway, turning off at taxi-way C, in violation of the instructions received by him from Air Traffic Control.

13. That the evidence of record indicates that at the time of said operation the certificate held by Respondent was under an Order of Suspension and that therefore he did not by virtue of said Order have in his possession a current and valid airman's

certificate and that consequently he also at that time was in violation in that Respondent had failed to surrender his suspended airman certificate.

14. That by reason of all foregoing facts and circumstances, the Respondent is found to have operated in regulatory violation of Sections 61.3 (a), 61.19(f), 91.75 (b), 91.87(h) and 91.9 of the Federal Aviation Regulations.

15. That all issues of credibility as necessary in this proceeding have on the evidence and for the reasons previously discussed herein been resolved in favor of the complainant.

16. That safety in air commerce or air transportation and the public interest do not require the affirmation of the Administrator's order of revocation as issued, rather that it should be modified as hereinafter set forth.

ORDER

IT IS THEREFORE ADJUDGED AND ORDERED:

1. That the Administrator's Order of Revocation be and the same hereby is modified to provide for a suspension of 10 months instead of revocation.

2. That Respondent's Airman's Certificate No. 53040-41 with attached ratings and limitations be and the same hereby is suspended effective 11 days from this date, such suspension to continue thereafter for a period of 10 months, after such Certificate shall have been physically surrendered to the Regional Council of the New England Region of the Federal Aviation Administration or other authorized representative of the Federal Aviation Administration.

3. That the Certificate shall be surrendered by depositing it in the United States mail, postage prepaid and properly addressed to the proper official of the Federal Aviation Administration of by

personal delivery to such individual.

4. If the Respondent surrenders his Certificate prior to the effective date of this Order the period of suspension shall commence on the date of the actual surrender and continue thereafter for the period specified herein.

However, if the Respondent fails to surrender his Certificate on or before the effective date of this Order the suspension shall continue in effect until the Certificate has been physically surrendered and has been in the possession of the Federal Aviation Administration for a period of 10 months.

APPEAL

Either party to this proceeding may appeal this Initial Decision and Order. The Appellant shall file his notice of appeal within 40 days after service upon him of this decision file a brief in

which are set forth his objections to this Initial Decision and Order.

A notice of appeal and brief shall be filed with the National Transportation Safety Board, Docket Section, 800 Independence Avenue, SW, Washington, D.C. 20594.

No appeal to the Board from either party is received within the time allowed or the Board does not on its own motion review this Initial Decision, the Decision and Order shall become final.

The timely filing of an appeal shall however stay the Order contained in this Initial Decision.

S/ Patrick G. Geraghty
Administrative Law Judge
10 November 1976

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its office in Washington, D.C. on the 10th day of March 1977.

JOHN L. McLUCAS, Administrator,
Federal Aviation Administration,

Complainant,

v.

ALLEN W. HAYES,

Respondent.

Docket SE-
3284

OPINION AND ORDER

Both respondent and the Administrator have appealed from the initial decision of Administrative Law Judge Patrick G. Geraghty, issued orally on October 19, 1976, at the conclusion of the hearing which was held in this proceeding on August 11 and 12, and October 19, 1976.¹ The law judge therein made the following findings:

¹An excerpt from the hearing transcript containing the initial decision is attached.

1. Respondent, on September 22, 1975, acted as pilot-in-command of Piper Aircraft N4971J, which landed at New Haven Airport, New Haven, Connecticut, at approximately 1751 local time.

2. At said time, the New Haven Airport had in operation an operating control tower operated by the United States.

3. As respondent approached the airport on this flight, he contacted the control tower, reporting his position as 6 miles east of the field.

4. Respondent was instructed by Air Traffic Control (ATC) to report to the tower on a left down wind for Runway 20. Contrary to said instruction, respondent did not report on a down wind leg, but instead reported at a time when he was approximately 1/2 mile out on final approach for Runway 20.

5. Prior to the time that respondent advised ATC that he was on a 1/2 mile final for Runway 20, another aircraft, Cherokee N4435 Tango, had been cleared for takeoff and was taxiing into position on Runway 20.

6. ATC, upon ascertaining that respondent was 1/2 mile out on final for Runway 20, cancelled the takeoff clearance for November 4435 Tango and advised respondent in Aircraft 4971 Juliette to go around.

7. Despite the aforesaid instruction to go around, which instruction was issued more than once, respondent failed to comply therewith.

8. Subsequent to receipt of those instructions on his approach to Runway 20, respondent completed a landing on Runway 20 without having received clearance from ATC to land his aircraft.

9. After landing upon Runway 20, respondent was advised by the tower to turn right off Runway 20; however, contrary to said instruction, respondent, instead of taxiing clear, executed a 180° turn on the active runway and proceeded to taxi down said runway, turning off at taxiway C, in violation of the instructions received by him from ATC.

10. The evidence of record indicates that at the time of said operation the certificate held by respondent was under an Order of Suspension; that therefore he did not, by virtue of said Order, have in his possession a current and valid airman's certificate; and that he also at that time had failed to surrender his suspended airman certificate.

The law judge further found that, by reason of all the foregoing facts and

circumstances, respondent violated sections 61.3(a), 61.19 (f)³, 91.75(b),⁴

²Section 61.3(a) provides, in pertinent part, as follows:

"§ 61.3 Requirement for certificates, rating, and authorizations.

(a) Pilot certificate. No person may act as pilot in command or in any other capacity as a required pilot flight crew member of a civil aircraft of United States registry unless he has in his personal possession a current pilot certificate issued to him under this part. However, when the aircraft is operated within a foreign country a current pilot license issued by the country in which the aircraft is operated may be used."

³Section 61.19(f) provides, in pertinent part, as follows:

"§ 61.19 Duration of pilot and flight instructor certificates.

* * * * *

(f) Return of certificate. The holder of any certificate issued under this part this is suspended or revoked shall, upon the Administrator's request, return it to the Administrator."

⁴Section 91.75(b) provides, in pertinent part as follows:

"§ 91.75(b) Compliance with ATC clearances and instructions.

* * * * *

(b) Except in an emergency, no person may, in an area in which air traffic control is exercised, operate an aircraft contrary to an ATC instruction."

91.87(h),⁵ and 91.9⁶ of the Federal Aviation Regulations (FAR). The law judge concluded that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order of revocation, and he thereupon modified said order to provide for a 10-month suspension of respondent's commercial pilot certificate.

⁵Section 91.87(h) provides, in pertinent part as follows:

"§ 91.87(h) Operation at airports with operating control towers.

(h) Clearances required. No pilot may, at an airport with an operating control tower, taxi an aircraft on a runway or taxiway, or takeoff or land an aircraft, unless he has received an appropriate clearance from ATC. A clearance to "taxi to" the runway is a clearance to cross all intersecting runways but is not a clearance to "taxi on" the assigned runway."

⁶Section 91.9 reads as follows:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

Respondent, in his appeal brief, argues that the Administrator's manner of identifying respondent as the pilot of N4971J during the subject incident was faulty in a number of respects; and that, regardless of the identify of the pilot of that aircraft, no sanction is warranted since (a) the pilot is the final authority as to the operation of his aircraft, (b) a landing aircraft has the right of way over a plane on the surface waiting to take off, and (c) a pilot, in the execution of his responsibilities as pilot-in-command, is not required to blindly follow ATC instructions particularly where (as in this instance) the instructions are unjustified and inconsistent with applicable regulations.⁷

The Administrator's appeal is twofold. First, he argues that the law judge erred in

⁷ Respondent also requests oral argument. It does not appear, however, that oral argument would serve any useful purpose, and respondent's request therefor will be denied.

dismissing the allegation in the complaint that respondent, on April 13, 1976, operated N4971J when he did not hold a current and valid airman certificate. Second, the Administrator contends that the law judge's reduction of sanction is not warranted in view of the deliberate, reckless nature of respondent's violations in this case, considered together with his prior violation history.

Each party has also filed a reply brief opposing the appeal of the other party.⁸

Upon consideration of the briefs of the parties, and the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order of revocation. Except as modified with respect to sanction, we adopt the law

⁸In addition, the Administrator moved to dismiss part of respondent's appeal for failure to timely perfect such appeal and/or to strike part of respondent's reply brief. In order to assure a complete record and a full consideration of all issues on appeal, and in view of respondent's pro se status, the Administrator's motion will be denied.

judges findings as our own.

The evidence of record regarding the pilot identification issue is recounted in great detail in the initial decision (Tr.1-191 to Tr.1-199). The Administrator's case on this issue rested largely on the Assistant Manager of New Haven Airways who testified that, while he was working at the counter in his office at the airport at approximately 5:45 p.m., on September 22, 1975, he became aware, by listening to the tower frequency on his radio, that the tower had instructed an aircraft to go around; that he observed the plane continue its approach and land, and also observed it intermittently as it taxied toward the ramp; that as he observed the plane pulling up in front of New Haven Airway's hanger, he walked out to the plane to ask the pilot not to blast the hangar with propwash as he taxied out; and that he had a clear view of the pilot as he talked to him from a distance of about

10 feet for approximately 20 to 30 seconds.⁹

Eight days later, on September 30, 1975, this witness went to Ithaca, New York, in the company of, and at the request of, a Federal Aviation Administration (FAA) representative who was familiar with respondent. They went to respondent's place of business, where the witness viewed a person, sitting in the front seat of an aircraft parked in a hangar (which thereafter was taxied out of the hangar), for a period of 1 or 2 minutes and from a distance of 30 to 40 feet. He positively identified the person he viewed at that time as the same person he saw in the pilot's seat of aircraft N4971J in New Haven on September 22. The FAA representative testified that the person seated in the plane at Ithaca on September 30, and identified by the New Haven Airway's Assistant Manager as the same person he saw 8 days earlier in N4971J in New Haven, was in fact respondent.

⁹This witness also observed the last three digits on the aircraft registration number to be 71J.

At the hearing, the New Haven Airways witness was unable to positively identify respondent either from a series of photographs or from a lineup of persons assembled in the hearing room. However, he did testify that one of the photographs, later identified as a picture of respondent,¹⁰ was the closest in the series to the person he observed in N4971J on September 22, 1975.

Respondent called as witnesses several employees of respondent's company (Chartair, Inc.) who testified that, despite the fact that the aircraft was owned by respondent, a number of pilots had access to the plane, and that the records of a particular flight do not necessarily reveal the identity of the pilot.¹¹ Another witness (a line boy at

¹⁰Exhibit A-7(a).

¹¹One of these witnesses (the General Manager of Chartair) stated that he had not checked the records to determine who was flying N4971J on September 22, 1975.

Chartair) testified in effect that, from the vantage point described by the New Haven Airway's witness from which he viewed respondent at Ithaca on September 30, 1975, it would not have been possible to identify a person sitting in a plane as it emerged from the hangar.

The law judge, after summarizing the pertinent evidence bearing on the identification issue and considering the demeanor and interest of the various witnesses, made a clear and unequivocal credibility finding in favor of the Administrator. Based thereon, the law judge concluded that the Administrator had established, by a preponderance of the substantial, reliable, and probative evidence, that respondent did operate N4971J on September 22, 1975, during the incident which provided the basis for the complaint.

We discern nothing in the record which would cause us to overturn the above finding, which rests largely on a credibility assessment within the exclusive province of the

law judge who, as the trier of fact, is alone in a position to observe the demeanor of the witnesses. In our judgment, the process of identification utilized by the Administrator was reasonable under the circumstances, and there was no irregularity of a magnitude which would constitute grounds for invalidating the identification itself. Despite the New Haven Airway's witness' lack of certainty at the hearing regarding the photographs or the lineup of persons, which is understandable since the incident occurred a year earlier, the fact remains that this witness positively identified respondent 8 days after the incident as the pilot who landed N4971J at New Haven on September 22, 1975.

The circumstances surrounding the incident of September 22, 1975, are largely self-evident from the transcript of communications to and from New Haven Local Control.¹²

¹²Exhibit A-5.

After the pilot reported his position as 6 miles east of the field, N4971J was advised by the controller to report downwind for Runway 20. Approximately 1 ½ minutes later, the following communications ensued:¹³

1751:00 LC Three five tango cleared for takeoff

:05 35T Three five tango

:09 71J Seven one jay's on a half mile final for two zero

:13 LC Three five tango cancel takeoff clearance, one seven juliet go around

:21 71J Well do you want us all to stop this is seven one jay

:25 LC Seven one juliet go around

:30 616 I slip tower six zero six one six

:33 LC Aircraft short final go around traffic on the runway

:37 71J There is no traffic on the runway tower this is seven one jay we're passing by the traffic which is holding short of the runway we're gonna land

¹³Id., p. 6-7.

:44 LC Seven one juliet you were instructed to go around do so right now

:52 LC Three five tango position and hold please

:55 35T Three five tango

:58 LC OK seven one juliet turn right at the runway intersection give us a call at the telephone please ats a

1752:05 80R Eight zero romeo salty

:06 LC Eight zero romeo continue report a mile south of the shoreline seven one juliet you have not followed one single instruction give us a call on the telephone when you get into New Haven Airways three five tango cleared for takeoff

Three controllers who were on duty in the tower testified, in essence, that a portion of aircraft 35T was on the runway when 71J passed overhead; and that, instead of making a right turn at the runway intersection as instructed, 71J made a 180° turn on the runway and taxied back to a taxiway, where a left turnoff the runway was made. In addition, the

pilot of 35T testified that he had proceeded beyond the hold line¹⁴ and that, when 71J passed overhead, the front part of his aircraft had passed the edge of the runway.

From the above, it is clear that respondent acted contrary to specific instructions from the tower by a) failing to report downwind, b) landing his aircraft, and c) making a 180° turn on the runway and departing via a taxiway. It should also be noted that the instruction to go around was given four separate times by the controller, yet respondent persisted with his approach and landing.

We can find nothing in the record which would excuse respondent from complying with the tower's instructions. Section 91.75(b) is explicit in providing that no

¹⁴The hold line is approximately 75-100 feet from the edge of the runway and should not be passed until an aircraft is cleared to takeoff or cleared into position for takeoff.

person may, in an area in which air traffic control is exercised, operate an aircraft contrary to an ATC instruction, as is section 91.87(h) in providing that no pilot may, at an airport with an operating control tower, land an aircraft unless he has received an appropriate clearance from ATC. Respondent maintains that the actions of the pilot in this instance were authorized by sections 91.67(f)¹⁵

¹⁵Section 91.67 (f) provides, in pertinent part, as follows:

"§ 91.67 Right-of-way rules; except
 water operations.
 * * * *

(f) Landing. Aircraft, while on final approach to land, or while landing, have the right of way over other aircraft in flight or operating on the surface. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right of way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land, or to overtake that aircraft."

and 91.3(a)¹⁶ of the FAR. We do not agree. Those provisions are general in nature and, as a matter of common sense and a logical interpretation of operating rules as a whole, must give way to the specifics of sections 91.75 and 91.87.¹⁷ The latter provisions are an integral part of the ATC system, the purpose of which is to ensure separation of traffic. Adherence to ATC instructions on the part of pilots is essential to the effectiveness of this system. If pilots were free to disregard these instructions,

¹⁶Section 91.3(a) provides, in pertinent part, as follows:

"§ 91.3 Responsibility and authority
 of the pilot in command.

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft."

¹⁷Thus, section 91.67(f) obviously has a greater application to operations at uncontrolled fields, where there is no tower to provide traffic separation and pilots must rely on the right-of-way rules and on their own ability to see and avoid other aircraft.

and to land without a clearance, totally unacceptable elements of uncertainty and disorder would be introduced into the system. ¹⁸

Furthermore, there were no actions on the part of the controllers which could be found to justify respondent's conduct. Neither the handling of other aircraft, nor the communications with respondent subsequent to the incident, have any bearing on the incident and provide no justification for respondent's actions.¹⁹

¹⁸Respondent cites in his brief several judicial decisions, rendered in aircraft accident litigation, to support the general proposition that the pilot is responsible for the safe operation of the aircraft. We do not argue with that proposition, nor find it inconsistent with our decision herein. However, that responsibility does not give the pilot the right to disregard ATC instructions designed to separate traffic and thus enhance safety.

¹⁹Respondent faults the controllers for failing to maintain proper vigilance so as to sight N4971J at an earlier point. The controllers, in testimony accepted by the law judge, stated that N4971J appeared to pop out from behind a hill in the approach area. In any event, it appears that respondent's failure to report downwind was more instrumental in the controller's inability to sight N4971J at an earlier point than any lack of vigilance on the part of the controllers.

The record does not indicate any form of emergency which might be said to excuse respondent's failure to comply with ATC instructions. Rather, it appears that he had made his mind up to land the aircraft and no amount of instruction from the tower to the contrary could keep him from that goal.

In view of the foregoing, it is our conclusion that the evidence of record clearly establishes violations of sections 91.75(b) and 91.87(h) of the FAR. It is our further conclusion that a violation of section 91.9 was established. The law judge accurately characterized respondent's operation of the plane as "reckless." Moreover, this operation created a conflict with aircraft 35T which was in turn a form of endangerment, potential at the very least and clearly within the intent of section 91.9.

The charge that, when respondent operated the aircraft during the incident described above, he did not hold a current and valid airman certificate is based on the following

circumstances. An order of the Administrator suspending respondent's certificate, following an appeal to the Board (Docket SE-1469), was ultimately upheld by the U.S. Court of Appeals for the D.C. Circuit in August of 1973. The record indicates that respondent never surrendered his certificate pursuant to this order, despite the fact that the Administrator's counsel sent to respondent a certified letter, dated September 10, 1974, directing respondent to surrender his certificate and stating that until the certificate is surrendered and the period of suspension served respondent would not hold a valid airman certificate.²⁰

²⁰Exhibit A-10. The return receipt attached to this exhibit indicates the letter was received at respondent's offices.

Although respondent surrendered his certificate to the FAA in 1974, that surrender was pursuant to order upheld by the court in an entirely separate proceeding, (Docket SE-1618) suspending respondent's certificate for 60 days. The 60-day period of surrender in 1974 cannot be found to have also satisfied the 45-day period of suspension ordered in Docket 1469. Consequently, respondent's failure to surrender his certificate pursuant to the latter proceeding, and his operation of an aircraft on September 22, 1975, constitute a violation of sections 61.3(a) and 61.19(f)²¹

²¹At the same time, it is our view that the Administrator, upon failure of respondent to respond to the letter directing him to surrender his certificate, should have taken further steps, such as sending a representative to respondent to collect the certificate or, if necessary, resorting to court action to obtain the certificate. Any lack of diligence of the Administrator's part, however, by no means excuses respondent's failure to surrender.

The Administrator also charged in the complaint that respondent violated sections 61.3(a) and 61.19(f) on a separate occasion by operating N4971J on a flight which landed at Syracuse, New York, on April 13, 1976. The Administrator's case was based exclusively on the testimony of counsel who stated that he had arranged to meet respondent in Syracuse at the ATC office at the airport at 2:00 p.m., on April 13, 1976; that after he had arrived at about 1:45 p.m., the ATC chief received word that respondent had radioed in that he was on his way from Ithaca; and that at approximately 2:00 p.m., he observed respondent taxi N4971J up to the front of the building and park the aircraft. The law judge, noting that the respondent was only observed taxiing the aircraft in the vicinity of the office building, found as follows:

"I feel that the evidence is just too ambiguous. The burden of proof in this proceeding. . . rests with the Administrator and the evidence here is just not sufficient for me to draw the inference as being most probable on this to the exclusion of any other inference that the respondent in fact operated 71 Juliette as pilot in command from Ithaca to Syracuse on that day." (Tr. 1-160).

While we look on this as a close question, the law judge's weighing of the evidence appears reasonable and therefore will not be disturbed.

Finally, with respect to sanction, the record of certificate actions taken against respondent may be summarized as follows:

1. By order of the Administrator dated July 29, 1969, respondent's certificate was suspended for 15 days for violations of section 91.75(b), 91.87(h) and 91.9 of the FAR.

2. By order of the Administrator dated October 16, 1970, respondent's certificate was suspended for 45 days for violations

of section 91.87(h) and 91.9 of the FAR.

3. By order of the Administrator dated July 20, 1971, respondent's airman certificate was suspended for 120 days for a violation of section 91.170 of the FAR (operating aircraft when the altimeter and static system has not been tested and inspected).

All three of these orders were affirmed by the Board, with the only modification being a reduction in sanction to a 60-day suspension in the third case, and also upheld by the U.S. Court of Appeals.

The first two of the above cases involved the disregard of ATC instructions and the taking of actions (e.g., taking off an aircraft) without first obtaining the requisite ATC clearance. The substantially identical violations herein indicate both a continuing disdain for the ATC system on

respondent's part and the ineffectiveness of the prior suspensions as a deterrent to such conduct. The instant case also includes the entirely separate and serious violation involving the operating of an aircraft by respondent at a time when his certificate was under suspension. Considering the record herein, in light of respondent's prior violation history, it is our conclusion that respondent, by his continuing and flagrant disregard of the regulations, has demonstrated that he lacks the care, judgment and responsibility required of the holder of an airman certificate. It therefore follows that he is unqualified to hold said certificate, which is subject to revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal be and it hereby is denied;
2. The Administrator's appeal be and it hereby is granted, in part;

3. The Administrator's order, as modified, be and it hereby is affirmed; and

4. The revocation of respondent's commercial pilot certificate shall commence 30 days after service of this order.²²

TODD, Chairman, BAILEY, Vice Chairman, McADAMS, HOGUE, and HALEY, Members of the Board, concurred in the above opinion and order.

²²For purposes of this order, the respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to section 61.19(f) FAR.

SERVED: June 28, 1977
NTSB Order No. EA-1028

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION
SAFETY BOARD at its office in Washington,
D.C. on the 23rd day of June 1977

QUENTIN S. TAYLOR, Acting
Administrator, Federal Aviation
Administration,

Complainant,

v.

Docket SE-3284

ALLEN W. HAYES,

Respondent.

ORDER DENYING PETITION FOR
RECONSIDERATION

Respondent has filed a petition for reconsideration of NTSB Order EA-980, served March 31, 1977, whereby the Safety Board affirmed the revocation of respondent's commercial pilot certificate. Respondent's petition is based on the contention that the Board erred in the following respects: (1) by improperly weighing crucial record evidence concerning the identification of respondent as the pilot of the aircraft in question; (2) by failing to strictly construe the regulations respondent was charged with violating; and (3) by relying, in aggravation of sanction, on prior cases involving respondent which were disposed of on procedural grounds.

The Administrator has filed a reply urging that the petition be denied.

We have carefully reviewed the evidence of record concerning the pilot identification issue, in light of respondent's petition, and have found nothing which would cause us to alter our conclusion, expressed in Order EA-980, that the Administrator established by a preponderance of the evidence that respondent operated aircraft N4471J on the flight which became the subject of the Administrator's complaint. Although the respective testimony of the identifying witness and the FAA representative can be read to reflect a possible disparity as to which seat respondent was in during the identification at Ithaca subsequent to the incident,¹ the FAA representative clearly testified that the person identified on that occasion, as the pilot during the incident, was in fact respondent.

Respondent's second argument is deficient on its face in that he does not specify the manner in which the Board failed to strictly construe the regulations he was found to have violated. We have nevertheless reviewed the record and confirmed that these regulations clearly apply to the actions of respondent established by the record.

¹The testimony on this point is vague. The identifying witness at one point stated that he did not remember which side respondent was on (Tr. 96), at another point that he believed respondent was in the pilot's seat but that he could not be sure (Tr. 97), and at a third point that, although he was not positive, he believed respondent was in the co-pilot seat (Tr. 323-4). The FAA representative testified that respondent was sitting "on the left side" (Tr. 195).

Finally, we are unaware of any precedent which holds that enforcement cases which are disposed of on procedural grounds cannot be considered in regard to sanction in future cases involving the same airman.² Respondent has presented nothing which would dissuade us from our conclusion that the violations established herein, considered in conjunction with respondent's prior violation history, warrant the sanction of revocation.

In sum, the petition contains no matter which would justify modification of Order EA-980 in any way.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration be and it hereby is denied.

TODD, Chairman, BAILEY, Vice Chairman, McADAMS, HOGUE, and HALEY, Members of the Board, concurred in the above order.

²The principal case cited by respondent (Administrator v. Rivera, 1 N.T.S.B. 995 (1970)) does not stand for the above proposition, but rather is an example of a decision in which the Board chose not to dispose of a case on a procedural ground. Two of the three cases comprising respondent's prior violations were disposed of on procedural grounds, but under circumstances which were distinguishable from Rivera and which were affirmed by U.S. Courts of Appeals. Obviously, respondent cannot re-litigate those prior cases herein.

SERVED: July 28, 1977

NTSB Order No. EA-1050

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its office in Washington, D.C. on the 25th day of July 1977.

LANGHORNE M. BOND, Administrator,
Federal Aviation Administration,

Complainant,

v.

ALLEN W. HAYES,

Docket SE-3284

Respondent.

ORDER DENYING REQUEST FOR STAY

Respondent has requested a stay, pending judicial review, of the effective date of the revocation of his commercial pilot certificate ordered as a result of this proceeding.¹ The Administrator opposes the requested stay.

As a general matter, the Board grants requests for a stay of the effective date of a sanction until such time as the Court of

¹Order EA-980, March 31, 1977; reconsideration denied, Order EA-1028, served June 28, 1977. Respondent, in the letter requesting the stay, also argues that Order EA-1028 is in error. These arguments will not be considered herein inasmuch as the Board's Rules of Practice (49 CFS Part 821) do not provide for any further pleadings beyond a petition for reconsideration, which was denied by Order EA-1028.

Appeals completes the process of judicial review. These stays, however, have been invariably granted in cases where the sanction imposed has been a suspension of the pilot's certificate. In the instant case, on the other hand, the sanction ordered was revocation which, unlike a suspension, is based directly on a finding of lack of qualifications. Specifically, the Board concluded, ultimately, as follows:

"Considering the record herein, in light of respondent's prior violation history, it is our conclusion that respondent, by his continuing and flagrant disregard of the regulations, has demonstrated that he lacks the care, judgment, and responsibility required of the holder of an airman certificate" (Order EA-980, page 16).

Respondent's prior violation history consists of three cases in which suspensions were imposed. All three of the Board's decisions were upheld by the Court of Appeals. Two of these three cases, like the instant proceeding, involved the disregard of ATC instructions and the taking of actions without first obtaining the requisite ATC clearance.

The circumstances herein are strikingly similar to those in Administrator v. Metro Air Systems, Inc., Order EA-918, November 4, 1976, wherein the Board denied a request for a stay of the revocation of the certificate of a respondent which had a history of three prior cases, involving suspensions based on similar violations and which were all upheld by the Court of Appeals. The instant case (Docket SE-3284) contains the additional element that, in one of the three prior cases, respondent failed to surrender his certificate

after the Board's decision was upheld judicially, and thereafter operated an aircraft without a valid and current certificate.

In view of the history of respondent before this Board and before the Court of Appeals, it is our conclusion that a stay of the sanction herein would not be consistent with the public interest or with precedent.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's request for a stay of sanction pending judicial review be and it hereby is denied.

TODD, Chairman, BAILEY, Vice Chairman, McADAMS, HOGUE, and HALEY, Members of the Board, concurred in the above order.

NOT TO BE PUBLISHED - SEE LOCAL RULE 8(f)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 77-1759

September Term, 1978

Allen W. Hayes,

Petitioner

United States
Court of Appeals
for the District
of Columbia Circuit

v.

National Transportation
Safety Board and Langhorne
M. Bond, Administrator,
Federal Aviation Adminis-
tration,

Filed Jan 26 1979

GEORGE A. FISHER
Clerk

Respondents

PETITION FOR REVIEW OF AN ORDER OF THE
NATIONAL TRANSPORTATION SAFETY BOARD

BEFORE: WRIGHT, Chief Judge, ROBINSON
and ROBB, Circuit Judges

JUDGMENT

This cause came on to be heard on a petition for review of an order of the National Transportation Safety Board, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. See Local Rule 13(c).

On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the order of the National Transportation Safety Board under review herein is hereby affirmed.

Per Curiam

For the Court:

S/ George A. Fisher
GEORGE A. FISHER, Clerk

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.